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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,754	03/06/2002	Kenichi Tsuchiya	32405R100	5211

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EXAMINER

JOYCE, WILLIAM C

ART UNIT PAPER NUMBER

3682

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/090,754

Applicant(s)

TSUCHIYA ET AL.

Examiner

William C. Joyce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-26 is/are pending in the application.
- 4a) Of the above claim(s) 7-11, 13-19, 21 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-6, 12, 20 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This Office Action is in response to the amendment filed February 4, 2004 for the above identified patent application.

#### ***Election/Restrictions***

1. Claims 7-11, 13-19, 21, and 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper filed 7/16/03.

#### ***Drawings***

2. The drawings were received on February 4, 2004. These drawings are approved.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 4-6, 20, and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 476 458 ('458).

The prior art reference EP '458 illustrates a differential unit for a motor vehicle for transmitting a driving force to a pair of driving wheels while absorbing a rotational difference therebetween, comprising: a case, a differential mechanism accommodated in the case, a drive pinion shaft for transmitting the driving force to the differential mechanism, said drive pinion shaft rotatably supported in the case with at least two bearings having an inner race, respectively, a tubular spacer having an inner diameter larger than an outer diameter of the drive pinion shaft, said spacer interposed between the inner races of the bearings such that the spacer covers the drive pinion shaft; and radial position regulating means for regulating a radial position of the spacer relative to the drive pinion shaft, said means provided between an inner surface of the spacer and an outer surface of the drive pinion shaft.

5. Claims 4-6, 20, and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Rode (US Patent 5,549,397).

Rode illustrates in Figure 6 a differential unit for a motor vehicle for transmitting a driving force to a pair of driving wheels while absorbing a rotational difference therebetween, comprising: a case, a differential mechanism accommodated in the case, a drive pinion shaft for transmitting the driving force to the differential mechanism, said drive pinion shaft rotatably supported in the case with at least two bearings having an inner race, respectively, a tubular spacer having an inner diameter larger than an outer diameter of the drive pinion shaft, said spacer interposed between the inner races of the bearings such that the spacer covers the drive pinion shaft; and radial position

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regulating means for regulating a radial position of the spacer relative to the drive pinion shaft, said means provided between an inner surface of the spacer and an outer surface of the drive pinion shaft.

Referring to column 6, lines 26-30, Rode discloses the radial inner collar (203) on the second end of the adapter sleeve should be sized to fit snugly upon the smaller diameter of the axle or spindle so as to prevent radial movement of the adapter sleeve 122'.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over either EP 0 476 458 or US Patent 5,549,397 (Rode).

The prior art to either EP 0 476 458 or US Patent 5,549,397 do not appear to disclose the spacer being made from metal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the spacers of EP 0 476 458 or US Patent 5,549,397 from metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Response to Arguments***

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Joyce whose telephone number is (703) 305-5114. The examiner can normally be reached on Monday - Thursday 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached on (703) 308-3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William C. Joyce